IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.304 OF 2002

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Kruparam Parshuram Devkota ...Appellant

v/s

State of Maharashtra ...Respondent

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Ms.Pranali Shetye for the Appellant.

Mr.A.M. Shringarpure, APP for the State.

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CORAM: V.M.KANADE, J.

DATED: 14TH OCTOBER,2004

JUDGMENT:

1. The Appellant is challenging the judgment and order passed by the Addl.Sessions Judge, Palghar in

Sessions Case No.127 of 2001. By the said judgment and order dated 19-1-2002 the Sessions Court convicted the accused under Section 376 of the Indian Penal Code and sentenced him to suffer RI for 10 years.

2. The prosecution case in brief is that the prosecutrix belongs to Warli tribe and was working on construction site of the accused, along with her husband and brother-in-law. The accused asked the prosecutrix to collect wooden plank from the building and he took her to the top floor of the building and there the Appellant and the accused No.1 raped her. Complaint was lodged by the prosecutrix on the next day after she informed her husband about the said incident at night. The accused were arrested. The trial court convicted them on the basis of evidence adduced by the prosecution.

3 The learned Counsel appearing on behalf of the prosecution has taken me through the evidence on record. I have perused the evidence of the prosecutrix, who has stated that the accused asked her to accompany him to bring wooden plank. He told her that she should work for him every day and that

he would provide clothes to her. He offered tea to her, but she refused. He then asked her to being wooden plank from the top of the building. Accordingly she went up along with the accused. The accused took her in a small room and pulled her inside the room. Accused No.2 i.e. the present Appellant locked the door of the terrace. The Appellant was the watchman of the building. Both accused lifted her and told her not to raise any shout, otherwise they would throw her from the terrace. Thereafter, the accused No.1 committed sexual intercourse with her, while the appellant/accused No.2 pressed her mouth. Then, the accused No.2/ present Appellant also committed sexual intercourse. Her bangles were broken in the process. She did not inform her husband due to fear. However, at night she informed her husband, who told her that she should lodge a complaint in the police station. This witness has been cross-examined at length. However, the defence was not in a position to retract any admission from this witness. The prosecution has examined a Doctor, who has stated that there were no external marks of injury on the prosecutrix. In my view merely because there was no external injuries, it cannot be said that rape was not committed on the

prosecutrix. The prosecutrix is a middle aged lady having five children. She was threatened by the accused and therefore she did not resist. Pieces of bangles were found at the spot, which have been proved by examining the panch witness P.W.1 Shailesh Nair. Chemical Analyser's report also shows that on peticoat, semen stains of B & O group were found on the clothes of accused No.1. Similarly, blood stains of 'B' group were found on the clothes of accused No.1 and blood stains of 'O' group were found on the clothes of accused No.2/present Appellant. In my view the prosecution has proved the case beyond reasonable doubt. I have no hesitation in holding, therefore, that the accused have committed the said offence as alleged by the prosecution. The finding of the trial court, therefore, is confirmed. So far as the sentence is confirmed, the accused No.2 is in jail from the date of incident. He has already undergone six years of sentence. In my view this is a fit case where the sentence should be reduced from 10 years to 7 years. So far as appellant is concerned, the Appeal is therefore partly allowed. Sentence of the Appellant/original accused No.2 is reduced from 10 years to 7 years.

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